

NOT FOR CITATION

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CARLOS HENDON,

Petitioner,

vs.

CALDERON, Warden,

Respondent.

No. C 05-3676 PJH (PR)

ORDER OF DISMISSAL

(Doc 6)

This is a habeas case which was transferred here from the United States District Court for the Eastern District of California. Petitioner challenges a disciplinary conviction for masturbating in front of guards. He lost ninety days of good time credits, so it may be that the claim is properly brought in habeas.

In the initial review order the court noted that the transfer may have been erroneous because venue might not be proper here, but declined to resolve the question because objections to venue can be waived by respondent. The court also noted that if petitioner's good time credits were returned to him, as is a possibility under prison regulations if he committed no further violations, the case might not be properly brought in habeas. Neither of these were matters which could be resolved on initial review, but the court also noted that petitioner had failed to plead exhaustion, as is his burden, and that the petition was assembled from an Eastern District form cover page and California state form continuation pages, one of which was missing. The petition therefore was dismissed with leave to amend on the court's form.

Rather than amend, petitioner has moved to "postpone" proceedings or, in the alternative, to dismiss the case without prejudice. He says that he realizes now that his

1 state petition, which was denied as illegible, was not adequate to exhaust his claims.
2 Although district courts can stay mixed petitions pending exhaustion in state court, see
3 *Rhines v. Weber*, 125 S. Ct. 1528, 1535 (2005), and so presumably also can stay
4 completely unexhausted petitions, petitioner has failed to show good cause for his failure to
5 exhaust his state judicial remedies before filing in federal court, *id.* (requirements for stay).
6 For that reason, petitioner's request for a postponement, treated as a motion for a stay (doc
7 6), is **DENIED**.

8 Petitioner's alternative request for a dismissal without prejudice is **GRANTED**. This
9 case is **DISMISSED** without prejudice. The clerk shall close the file.

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11 **IT IS SO ORDERED.**

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13 Dated: April 6, 2006.



PHYLLIS J. HAMILTON
United States District Judge

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